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**ABRAMS, FENSTERMAN, FENSTERMAN,**

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Seth L. Berman, Esq. (*pro hac vice admission to be requested*)

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Attorneys for Plaintiff YELLOWCAKE, INC.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a California  
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

Case No.: :20-cv-00988-DAD-BAM

**DECLARATION OF KEVIN BERGER  
IN RESPONSE TO ORDER TO SHOW  
CAUSE**

Magistrate Judge: Barbara A. McAuliffe

KEVIN BERGER, declares under penalty of perjury and states:

1. I am a shareholder and the Chief Executive Officer of Plaintiff Yellowcake, Inc. ("Yellowcake").

1           2. I submit this declaration in support of Seth L. Berman's application to be  
2 admitted *pro hac vice* to United States District Court for the Eastern District of  
3 California ("Eastern District") in the above referenced matter.

4           3. As set forth in detail below, I have engaged Mr. Berman to represent both  
5 Yellowcake and myself as co-counsel in connection with the above captioned matter  
6 and a number of other separate actions that involve common issues concerning certain  
7 copyrighted sound recordings owned by Yellowcake (the "Actions").

8           4. The Actions all involve common issues concerning copyrighted sound  
9 recordings but also involve different facts and different parties which necessitated the  
10 filing multiple discrete actions.

11           5. By way of background, Yellowcake is engaged in the business of  
12 intellectual property rights management and exploitation, including sound recordings  
13 of music.

14           6. Yellowcake owns and manages hundreds of thousands of sound recordings  
15 and distributes and monetizes some of the sound recordings it owns through a  
16 company known as Colonize Media, Inc. ("Colonize"). Both Colonize and its  
17 President, Jose David Hernandez, are common parties in the Actions and are both  
18 represented by Mr. Berman.

19           7. Over the years, Yellowcake has acquired many of its sound recordings  
20 through asset purchase agreements, recording agreements and licenses.

21           8. The music business is a very competitive business and it is not uncommon  
22 for disputes to arise amongst various rights holders and alleged claimants over the  
23 chain of title of assets that have been sold or assigned multiple times.

24           9. It is also not uncommon for parties that have disputes alleging copyright  
25 infringement in connection with the ownership disputes.

26           10. I recently discovered issues with several catalogs that Yellowcake had  
27 acquired and that we are being infringed by several competitors that resulted in the  
28 filing of the multiple recent Actions for which Mr. Berman applied for *pro hac vice*

1 admission in the Eastern District.

2 11. To be clear, I have engaged local counsel, Hefner, Stark and Marois, LLP  
3 to represent both me and Yellowcake in all the Actions. However, the Actions involve  
4 highly nuanced and technical issues concerning the authenticity of certain sound  
5 recordings, the chain of title to certain sound recordings and interpretation of music  
6 related transactional documents. In addition, there are millions of dollars at stake in the  
7 Actions and the outcome of the Actions will have a profound effect on both  
8 Yellowcake and me personally.

9 12. As such, I believe that it is in the best interest of both Yellowcake and me  
10 to engage Mr. Berman as special litigation counsel to support Hefner, Stark and  
11 Marois, LLP in connection with the Actions, because of Mr. Berman's unique  
12 experience and expertise regarding these issues.

13 13. Mr. Berman came highly recommended to me by a music publishing  
14 executive based in Los Angeles with whom I have business dealings.

15 14. I researched Mr. Berman's background and determined that his technical,  
16 music industry and legal experience was an ideal fit for the issues involved in the  
17 Actions.

18 15. As such, I contacted Mr. Berman to inquire about representing Yellowcake  
19 and myself as co-counsel in these Actions. Mr. Berman did not solicit me or otherwise  
20 contact me before I contacted him.

21 16. After initially speaking with Mr. Berman, I determined that he would be a  
22 valued part of Yellowcake's legal team.

23 17. Mr. Berman and Hefner, Stark & Marois, LLP are my chosen counsel in  
24 these high stakes Actions, the outcome of which will have tremendous impact on both  
25 Yellowcake and me personally.

26 18. As such, I respectfully request that Mr. Berman be admitted to the Eastern  
27 District of California *pro hac vice* in this matter.

28 I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 2, 2020.



KEVIN BERGER

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